Form 668-A(ICS)
(Rev. July 2002)

Notice of Levy

DATE: 01/29/2008

REPLY TO: Internal Revenue Service
CECELIA G HILL
1835 ASSEMBLY STREET
COLUMBIA, SC 29201-2430

TELEPHONE NUMBER OF IRS OFFICE: (803) 253-3112

RECEIVED
JAN 29 2008
LEGAL INQUIRIES
LEGAL DEPARTMENT

NAME AND ADDRESS OF TAXPAYER:
JAMES E MACALPINE
603 WOODLEA CT
ASHEVILLE, NC 28806

TO: WACHOVIA SECURITIES
10750 WHEAT FIRST DR
MC WS1010
GLENN ALLEN, VA 23060

IDENTIFYING NUMBER(S): 236-86-5716

MACA

Kind of Tax	Tax Period Ended	Unpaid Balance of Assessment	Statutory Additions	Total
1040	12/31/1997	21945.10	22914.05	44859
1040	12/31/1998	81572.51	37098.02	118670
1040	12/31/1999	66686.68	29693.52	96380
1040	12/31/2000	61465.19	26575.02	88040
1040	12/31/2002	96800.52	16192.81	112993
1040	12/31/2003	115089.37	7158.34	122247
			Total Amount Due	583191

THIS LEVY WON'T ATTACH FUNDS IN IRAs, SELF-EMPLOYED INDIVIDUALS' RETIREMENT PLANS, OR ANY OTHER RETIREMENT PLANS IN YOUR POSSESSION OR CONTROL, UNLESS IT IS SIGNED IN THE BLOCK TO THE RIGHT. ⇒

We figured the interest and late payment penalty to 03-15-2008

Although we have told you to pay the amount you owe, it is still not paid. This is your copy of a notice of levy we have sent to collect thi unpaid amount. We will send other levies if we don't get enough with this one.

Banks, credit unions, savings and loans, and similar institutions described in section 408(n) of the Internal Revenue Code mu hold your money for 21 calendar days before sending it to us. They must include the interest you earn during that time. Anyo else we send a levy to must turn over your money, property, credits, etc. that they have *(or are already obligated for)* when they would have paid you.

If you decide to pay the amount you owe now, please bring a guaranteed payment *(cash, cashier's check, certified check, or money order)* to nearest IRS office with this form, so we can tell the person who received this levy not to send us your money. Make checks and money orders payable to **United States Treasury**. If you mail your payment instead of bringing it to us, we may not have time to stop the pers who received this levy from sending us your money.

If we have erroneously levied your bank account, we may reimburse you for the fees your bank charged you for handling the levy. You must file a claim with the IRS on Form 8546 within one year after the fees are charged.

If you have any questions, or want to arrange payment before other levies are issued, please call or write us. If you write to us, please include your telephone number and the best time to call.

Signature of Service Representative
/S/ CECELIA G HILL

Title
REVENUE OFFICER

Form 668-A(ICS) (7-2

Part 2 – For Taxpayer

TRANSACTION NOTIFICATION

WACHOVIA SECURITIES

Contact Information:
Wachovia Securities
Client Services Department
P.O. Box 6600
Glen Allen, VA 23058

888-215-3904

001262 401b 001
WBNA COLLATERAL ACCOUNT
JAMES E MACALPINE
603 WOODLEA COURT
ASHEVILLE NC 28806-4805

October 18, 2007

Account Number: 24720744
Dear Valued Client:

We want to thank you for your recent transaction(s) with Wachovia Securities. Industry regulations require brokerage firms to issue notifications when certain transactions result in securities or funds being transferred out of a client's account. These transactions include movement of assets to third parties or to outside entities bearing the same account holder name. This notification is not a replacement of your regular account statement.

If you have questions regarding the transaction(s) listed below, please contact our Client Services Department at the phone number or mailing address shown above. Should you have any other questions regarding your account, please contact your Financial Advisor.

Thank you.

Transaction Type	Date	Description of Transaction	Dollar Amount / Number of Shares
Check Issued	10/18/2007	WITHDRAWL CHK#001-RR01219219	$90,731.32
Payee Information	Recipient: UNITED STATES TREASURY		

TRANSACTION NOTIFICATION

WACHOVIA SECURITIES

Contact Information:
Wachovia Securities
Client Services Department
P.O. Box 6600
Glen Allen, VA 23058

888-215-3904

002518 401k 001
WBNA COLLATERAL ACCOUNT
JAMES E MACALPINE
603 WOODLEA COURT
ASHEVILLE NC 28806-4805

November 01, 2007

Account Number: 24720744
Dear Valued Client:

We want to thank you for your recent transaction(s) with Wachovia Securities. Industry regulations require brokerage firms to issue notifications when certain transactions result in securities or funds being transferred out of a client's account. These transactions include movement of assets to third parties or to outside entities bearing the same account holder name. This notification is not a replacement of your regular account statement.

If you have questions regarding the transaction(s) listed below, please contact our Client Services Department at the phone number or mailing address shown above. Should you have any other questions regarding your account, please contact your Financial Advisor.

Thank you.

Transaction Type	Date	Description of Transaction	Dollar Amount / Number of Shares
Check Issued	11/01/2007	CLIENT REQUEST CHK#001-RR01223924	$2,282.08
Payee Information	Recipient: UNITED STATES TREASURY		

EXHIBIT 6

January 7, 2008

Special Agent Timothy E. Penley
Department of the Treasury
2306 W. Meadowview Road
Greensboro, N.C. 27407
Certified Mail # 7002 2410 0000 2634 8708

Special Agent Andy Romagnuolo
Suite 211
151 Patton Ave
Asheville, N.C. 28801
Certified Mail # 7002 2410 0000 2634 8746

Dear Gentlemen;

I am providing you a courtesy copy of the affidavits of Non Liability filed in the public record. You have ten days to rebut the enclosed facts and law with particularity and specificity or be forever estopped from challenging the statements made therein. As to your duty to respond, the Courts have held that government officials are fiduciaries of the People, and as such have an absolute duty to respond.

Further to the point, the Supreme Court of the United States has held:

> Whatever the form in which the Government functions, anyone entering into an arrangement with the Government takes the risk of having accurately ascertained that he who purports to act for the Government stays within the bounds of his authority. The scope of this authority may be explicitly defined by Congress or be limited by delegated legislation, properly exercised through the rule-making power. And this is so even though, as here, the agent himself may have been unaware of the limitations upon his authority. **332 U.S. 380, 68 S.Ct. 1**

Therefore I am undertaking my Supreme Court mandated duty to accurately determine that each of you stay within your lawful authority. Should you be interfering in my private affairs without specific authority, then this will amount to an intentional tort.

In addition to responding to the attached Affidavit, please provide to me under pains and penalties of perjury copies of your specific evidence that:

1) I/we are a taxpayer(s).
2) I/we are not non-resident aliens as that term is defined under the IRC.
3) I/we are engaged in a trade or business as that term is defined in the IRC.
4) I/we have ever volunteered to accept a federal franchise.
5) I/we have ever received "Income" as that term is defined by the Supreme Court of the United States.
6) I/we are United States Citizens.

7) That the filings provided to the IRS (modified 1040NR, attachments, etc.) do not accurately reflect the law as written.

8) That the law as written is not the law instead of the lies and deceit promulgated by the IRS as declared by the Courts.

9) That demanding the People follow the lies and deceit promulgated by the IRS does not constitute a faith based premise for the law.

10) That a faith based legal system is not defacto a religion, which as an agent of the national government you are not forbidden from establishing.

Please send your responses to:

Ed Wahler
PO Box 681
Fletcher, NC 28732

Should you decide not to respond as requested, then you agree that everything provided to you or your corporate employers is true, correct and the law of the case. Should you continue to trespass in my/our private affairs after agreeing to all of the above, you agree that you are engaging in an investigation for an improper purpose and engaging in an excess of jurisdiction.

Thanks you for your prompt attention to this critically important matter.

Sincerely

Edward William: Wahler

Kathy Marie: Wahler

Attachment 2

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In re: David A. Willis misnomered as DAVID WILLIS	§	**No. _____**
	§	**Ref: 3:07-CR-00277-RJC-DCK-1**

PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 USC § 2241

I. PRAYER FOR RELIEF

Appellant requests this Court issue a Writ of Habeas Corpus declaring unconstitutional and *void ab initio*: (1) Public Law 80-772 which purported to enact Title 18, United States Code, Act of June 25, 1948, Chapter 645, 62 Stat. 683 *et seq.*, and (2) more specifically, Section 3231 thereof, 62 Stat. 826, which purported to confer upon "the district courts of the United States … original jurisdiction … of all offenses against the laws of the United States." These legislative Acts violated the Quorum, Bicameral and/or Presentment Clauses mandated respectively by Article I, § 5, Cl. 1, and Article I, § 7, Cls. 2 and 3, of the Constitution of the United States. The federal district court which ordered commitment of this Petitioner, under Section 3231, lacked jurisdiction and, therefore, any judgment and commitment order is ***void ab initio***. To imprison and detain a Petitioner and cause him future harm under a ***void*** commitment order is unconstitutional and unlawful. Therefore, Petitioner must be discharged from any present illegal incarceration and his indictment and judgment must be declared ***void immediately*** to prevent future harm. The Supreme Court has declared in *Glover v. United States* that even one additional day in prison without authority has Constitutional significance. 531 U.S. 198 (2001).

One bill was passed by the House of Representatives in 1947, the first session of

the 80th Congress. A second, distinct, amended, and entirely different bill was passed by the Senate in the second session of Congress in 1948. The first bill, the House bill, was truly enrolled. The second bill, the Senate bill, not passed by the House, was signed by the Speaker of the House and President of the Senate on June 23, 1948, after Congress was fully and completely adjourned and disbanded, not in session.

The bill signed into law by President Truman on June 25, 1948, the amended Senate bill not passed by the House, not the House bill which was truly enrolled, and was signed by Congress after Congress was fully and completely adjourned and is therefore is a political law and not a statute authorized by Congress.

The bill signed into law as Public Law 80-772 was not published in the Federal Register as required by the Federal Register Act, 44 USC § 1501, et seq. (1935) and therefore its enactment is in violation of Due Process.

The court should also dismiss the indictment and release Petitioner because no criminal complaint supported by proper probable cause affidavit was filed in this case as required by F.R.Crim.P. 3 (violation of Due Process according to Amendment V of the Constitution); no vote of 12 grand jurors occurred as was required by F.R.Crim.P. 6(f) (violation of Amendment V of the Constitution); the judge in this case is not an Article 3 judge (violation of Article III of the Constituition); the court in this case is selling conviction bonds as an incorporated for profit entity in violation of various Constitutional rights against peonage, slavery, and cruel and unusual punishment. Since Petitioner presents these claims by affidavit under the penalty of perjury, the court should issue an order for his immediate release on bond pending the resolution of this petition.

The court should note that the Petitioner may not be moved while his habeas

corpus petition is pending and requests the Marshals to so note for the record. Any attempts at movement would be prima facie case of retaliation as per the Supreme Court precedent in *Bordenkircher v. Hayes*. 434 US 357 (1978).

IA. REASONS THE GOVERNMENT CAN NOT WIN THIS ARGUMENT AND THE COURT CAN NOT DECLARE THE ARGUMENT FRIVILOUS

The district court obtained its jurisdiction over Petitioner pursuant to a grant issued by Congress by Public Law 80-772, Title 18 of the criminal code. That law contained a jurisdictional section, 18 USC § 3231, which gave the district court authority to prosecute Petitioner. A district court obtains its authority through acts of Congress. Without an act of Congress, i.e., without the validity of 18 USC § 3231, the court has no authority to prosecute Petitioner and its actions are *ultra virus*. See, e.g., the prior jurisdictional statute, 18 USC § 546 (1940), which only gave the district courts jurisdiction to prosecute pursuant to Title 18 as listed at that time. Since Petitioner establishes as a matter of law that Public Law 80-772 was never enacted, then the court has no authority pursuant to 18 USC § 3231 (i.e., jurisdiction ceased from its inception) and Petitioner is currently imprisoned for committing no crime (crimes can only be prosecuted by statute, i.e., ***no law, no crime***).

As Petitioner establishes, Public Law 80-772, introduced as H.R. 3190, was passed by the House in the first session of Congress in June 1947, sent to the Senate in June 1947, but not voted on. Congress then adjourned twice in 1947, was reconvened by the President twice in 1947 (according to British law when Congress is called back into session all prior legislation is terminated), then adjourned by a declared *sine die* adjournment in December 1947. In the second session of Congress, in June of 1948, the

same bill, H.R. 3190, not a new bill as would be required by British law, surfaced in the Senate, and the Senate materially amended it. The House then was asked to concur in the amendments, but never asked to vote on the amended bill. (A letter from Jeff Trandahl, dated in 2000), available to the court, and verified by the House library as valid, confirms the error).

Thus the House passed one bill in 1947, the Senate passed a different bill in 1948. After the passage, Congress fully adjourned *sine die* on June 20, 1948 at 7 AM. The bill was then *truly enrolled.* But which bill was enrolled as the bill passed? It was the House bill, which passed the House in 1947, but not the Senate. Big Mistake; Constitutional Mistake. So the House passed Title 18 in 1947, but the Senate did not. The Senate amended the bill in the second session in 1948, but did not vote on it. After Congress was completely and fully adjourned, and the members were disbanded, the President pro tempore and the Speaker of the House signed the bill into law on June 23, 1948. At that time Congress was disbanded and completely and fully adjourned. Another Big Mistake, Constitutional Mistake. But which bill was signed into law? The truly enrolled bill? No. It was the bill passed by the Senate, but not the House. Huge mistake, Constitutional mistake. Then the Senate bill, never passed by the House, was 'signed into law' by the President on June 25, 1948, ***while Congress was disbanded and not in session***. Bigger mistake, Error of Constitutional and Bill of Rights Proportions. Then, to compound the errors, the bill was never placed in the Federal Register as was required by the Federal Register Act, 44 USC § 1501, et seq. (1935). Another error of Constitutional proportions. It was bad enough that the President was a democrat and the Speaker of the House and President pro tempore of the Senate were Republicans, and openly ridiculed each other

and hated each other. However, that is no excuse to ignore the Constitution ***they all had taken an oath to uphold***. Thus, a political bill, not a Constitutional bill passed by Congress, is being used as the basis to imprison Petitioner, in direct violation of the Constitution of the United States. These actions amount to nothing less than peonage and slavery, acts never condoned by our founding fathers.

It should be noted that no appellate court has made proper findings of fact and law on the issues presented. It should also be noted that ***no district court case has precedent value***, and that for a district court to even hear the issue and avoid it, ignore it, or make an improper ruling (as some district court judges have done), is a violation of 28 USC § 455, 18 USC sections 241 and 241, and a prima facie case of bias and structural error and possible grounds for the impeachment of the judge for committing treason against the Constitution (the Supreme Court has determined that jurisdiction is a threshold issue, which must be determined first and that district courts of the United States are presumed to know the law).

Such lower court bias and Due Process violations were clearly exhibited in the lower court proceedings, when the court continued with the proceedings without jurisdiction.

It should also be noted that for the government to attempt to use non-precedent cases that made no ***proper*** findings and were made by a judge who had a prima facie case of bias and conflict, and was trying to protect his/her own liability for acting without jurisdiction, would probably amount to sanctionable conduct. The government's typical arguments also would not work and should require sanctions. 1) For the government to argue ***sine die*** would amount to a smoke and mirrors deflection and sanctionable conduct,

because although sine die is a valid argument, Petitioner is not raising that issue here. 2) For the government to argue Field & Co's ***enrolled bill rule*** would also amount to smoke and mirrors and sanctionable conduct, because the Constitutional quorum issue is precluded from Field & Co.'s enrolled bill rule by its own terms, i.e. '[the] signing…in open session, of an enrolled bill,' 143 U.S. at 672, which in any case only applies in 'the absence of a Constitutional requirement binding Congress.' United States v. Munoz-Flores, 495 U.S. at 391, n.4. 3) If the government makes the bogus argument that the court can claim jurisdiction pursuant to the prior statute, that would also amount to smoke and mirrors and sanctionable conduct, because P.L. 80-773, June 25, 1948, Ch. 646, § 1, 62 Stat. 869, ***positively repealed*** the former criminal jurisdiction granted to the district courts under the prior statute. Even if it had not, Petitioner was not charged under the prior statute, which carries different penalties and terms, and the attempt to nunc pro tunc the prior statute would be a violation of the Fair Warning Doctrine, and fraud by the government or court, whichever attempted to raise the bogus argument.

Furthermore, neither the court nor the government can declare the argument ***frivolous***. That would amount to nothing more than a smokescreen, an attempt to deflect the truth, which the courts are required to find as part of their function as arbitrator of the truth:

The typical definition in United States law (frivolous) is very different from its colloquial or political meaning. United States courts usually define "frivolous litigation" as a legal claim or defense presented even though the party and the party's legal counsel had reason to know that the claim or defense had no merit. A claim or defense may be frivolous because it had no underlying justification in fact, or because it was not presented with an argument for a reasonable extension or reinterpretation of the law, (*Wikepedia*) or because laws are in place unequivocally prohibiting such a claim (see Good Samaritan law).

In the United States, Rule 11 of the Federal Rules of Civil Procedure and similar state rules require that an attorney perform a due diligence investigation concerning the factual

basis for any claim or defense. Jurisdictions differ on whether a claim or defense can be frivolous if the attorney acted in good faith. Because such a defense or claim wastes the court's and the other parties' time, resources and legal fees, sanctions may be imposed by a court upon the party or the lawyer who presents the frivolous defense or claim. The law firm may also be sanctioned, or even held in contempt.

Lawyer Daniel B. Evans writes:

> [W]hen a judge calls an argument "ridiculous" or "frivolous," it is absolutely the worst thing the judge could say. It means that the person arguing the position has absolutely no idea of what he is doing, and has completely wasted everyone's time. It doesn't mean that the case wasn't well argued, or that judge simply decided for the other side, it means that there *was no other side*. The argument was ***absolutely, positively, incompetent***. The judge is not telling you that you were "wrong." The judge is telling you that you are out of your mind. *Wikepedia.*

A statement of frivolous requires ***findings of fact and law*** related to the claim. Since neither the government nor the court can dispute the facts and law related to the invalidity of Title 18, Petitioner requests that the court adopt Petitioner s findings of fact and law as those of the court.

Since the Supreme Court has declared that all actions cease once jurisdiction is challenged, and that jurisdiction is a threshold issue that must be resolved prior to any future actions by the court or government, and since the facts and law clearly establish in this habeas that the claim is valid and has merit, and that the court has no jurisdiction, any argument to the contrary without making specific findings of fact and law would be an attempt to circumvent the Constitution of the United States by the government, the court, or both, and thus, sanction able conduct.

II. JURISDICTION OF THIS COURT TO ISSUE ORDER

This court has jurisdiction to hear this Petition pursuant to 28 USC § 2241(a) and 28 USC § 1651, the All Writs Act. 28 USC § 2241(a) states that 'Writs of habeas corpus

may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdiction. The order of a circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.' 28 USC § 2241(c)(3) states that 'The writ of habeas corpus shall not extend to a prisoner unless – He is in custody in violation of the Constitution or laws or treaties of the United States…'. 28 USC § 2243 states: 'A court, justice or judge entertaining an application for a writ of habeas corpus shall ***forthwith*** award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto. The writ, or order to show cause shall be directed to the person having custody of the person detained. It shall be returned ***within three days*** unless for good cause additional time, ***not exceeding twenty days***, is allowed. The person to whom the writ or order is directed shall make a return certifying the true cause of the detention. When the writ or order is returned a day shall be set for hearing, ***not more than five days*** after the return unless for good cause additional time is allowed.'

Petitioner requests the court to take judicial notice that 28 USC section 2241, et seq. is still valid law and has not been overturned and is the ***only extraordinary remedy*** available for illegal confinement.

III. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article I, § 1, commands and declares that "[a]ll legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

Article I, § 5, Cl. 1, commands, in relevant part, that "a Majority of each [House

of Congress] shall constitute a Quorum to do Business," excepting therefrom permission to "adjourn from day to day" and "to compel Attendance of its Members, in such Manner, and under such Penalties as each House may provide."

Article I, § 7, Cl. 2, commands, in relevant part, that "[e]very Bill which shall have passed both Houses, shall, before it becomes a Law, be presented to the President of the United States."

Article I, § 7, Cl. 3, commands, in relevant part, that "[e]very … Resolution … to which the Concurrence of the Senate and House of Representatives may be necessary … shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the case of a Bill."

Title 1, United States Code, Section 106, Act of July 30, 1947, Chapter 388, Title I, Ch. 2, § 106, 61 Stat. 634, Pub.L. 80-278, provides, in relevant part, that "[w]hen [a] bill … shall have passed both Houses, it shall be printed and shall then be called the enrolled bill … and shall be signed by the presiding officers of both Houses and sent to the President of the United States."

Amendment I to the Constitution of the United States commands: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

Amendment Five to the Constitution of the United States commands: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a

presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

28 USC § 455 commands:

> (a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.
> (b) He shall also disqualify himself in the following circumstances:
> (1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;
> (2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;
> (3) Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;
> (4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;
> (5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:
> (i) Is a party to the proceeding, or an officer, director, or trustee of a party;
> (ii) Is acting as a lawyer in the proceeding;
> (iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;
> (iv) Is to the judge's knowledge likely to be a material witness in the proceeding.

(c) A judge should inform himself about his personal and

fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.

(d) For the purposes of this section the following words or phrases shall have the meaning indicated:

(1) "proceeding" includes pretrial, trial, appellate review, or other stages of litigation;

(2) the degree of relationship is calculated according to the civil law system;

(3) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;

(4) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, adviser, or other active participant in the affairs of a party, except that:

(i) Ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;

(ii) An office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;

(iii) The proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

(iv) Ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

(e) No justice, judge, or magistrate judge shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b). Where the ground for disqualification arises only under subsection (a), waiver may be accepted provided it is preceded by a full disclosure on the record of the basis for disqualification.

(f) Notwithstanding the preceding provisions of this section, if any justice, judge, magistrate judge, or bankruptcy judge to whom a matter has been assigned would be disqualified, after substantial judicial time has been devoted to the matter, because of the appearance or discovery, after the matter was assigned to him or her, that he or she individually or as a fiduciary, or his or her spouse or minor child residing in his or her household, has a financial interest in a party (other than an interest that could be substantially affected by the outcome), disqualification is not

required if the justice, judge, magistrate judge, bankruptcy judge, spouse or minor child, as the case may be, divests himself or herself of the interest that provides the grounds for the disqualification.

F.R.Crim.P. 3 commands:

The complaint is a written statement of the essential facts constituting the offense charged. It ***must be made under oath*** before a magistrate judge or, if none is reasonably available, before a state or local judicial officer.

F.R.Crim.P. 6(f) commands:

A grand jury may indict ***only if at least 12 jurors concur***. The grand jury – or its foreperson or deputy foreperson – ***must return the indictment to a magistrate judge in open court.*** If a complaint or information is pending against the defendant ***and 12 jurors do not concur*** in the indictment, the foreperson must promptly and in writing report the lack of concurrence to the magistrate judge.

The Eighth Amendment to the Constitution commands:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment.

The Thirteenth Amendment to the Constitution commands:

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

IV. STATEMENT OF FACTS

A sealed criminal complaint against Petitioner was filed on November 30, 2007 (Docket # 1).

An arrest warrant was issued on November 30, 2007. (Dock. # 4).

Preliminary appearance was entered on December 3, 2007.

A sealed indictment was issued on December 3, 2007. (Dock. # 5).

Standard discovery order was issued on December 6, 2007. (Dock. # 18).

Proposed jury instructions were issued on April 21, 2008. (Dock. # 38).

Jury trial was held on April 24, 2008.

Motion for New Trial was filed on May 5, 2008 (Dock. # 43) and denied on September 15, 2008 (Dock. # 52)

Sentencing was held on September 26, 2008 (Dock. # 54) and judgment was entered on October 14, 2008 (Dock. # 57), in which Defendant was sentenced to 1,210 months imprisonment, 2 years supervised release, $100 special assessment, $1,822.63 restitution. (Dock. # 57).

A notice of appeal was filed on October 15, 2008 (Dock. # 59).

V. ISSUE ONE: SINCE NO VALID PROBABLE CAUSE AFFIDAVIT WAS ISSUED, THE FOURTH AMENDMENT WAS VIOLATED AND JURISDICTION CEASED AT THAT POINT

The court should take notice that the Constitution of the United States is the Supreme Law of the Land, and is the contract between the people of the United States and its government. Each officer of the court took an oath of office to uphold the Constitution.

The Fourth Amendment to the Constitution requires: 'The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and not Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.'

F.R.Crim.P. 3 requires: 'The complaint is a written statement of the essential facts

constituting the offense charged. It must be made under oath before a magistrate judge or, if none is reasonably available, before a state or local judicial officer.'

F.R.Crim.P. 4(a) requires: If the complaint or one or more affidavits filed with the complaint establish probable cause to believe that an officense has been committed and that the defendant committed it, the judge must issue an arrest warrant to an officer authorized to execute it. At the request of an attorney for the government, the judge must issue a summons, instead of a warrant, to a person authorized to serve it.....

An affidavit is a formal sworn statement of fact, signed by the declarant (who is called the affiant or deponent) and witnessed (as to the veracity of the affiant's signature) by a taker of oaths, such as a notary public. The name is Medieval Latin for he has declared upon oath. In American jurisprudence, under the rules for hearsay, admission of an unsupported affidavit as evidence is unusual (especially if the affiant is not available for cross-examination) with regard to material facts which may be dispositive of the matter at bar. http://en.wikipedia.org/wiki/Affidavit.

An affidavit is required to provide that the person filing the affidavit is over the age of the majority, has personal knowledge of the facts stated, and if fully competent to testify to those facts.

The defendants docket sheet shows an affidavit filed for the criminal complaint by Ernest Mathis, special agent, FBI, on the 29th day of November, 2007. However, that affidavit does not meet the requirements of an affidavit of fact as required by the Fourth Amendment. Jurisdiction stopped at the time the supposed affidavit was filed. It was based on hearsay and unspported by fact.

Supreme Court precedent which establishes the requirement to Dismiss:

In *Giordenello v. United States*, 357 U.S. 480 (1958), the Supreme Court determined, that with no indictment on his complaint, a federal officer obtained a warrant for petitioner's arrest, but obtained no search warrant. His complaint was not based on his personal knowledge, did not indicate the source of his belief that petitioner had committed a crime, and set forth no other sufficient basis for a finding of probable cause. With this warrant, he arrested petitioner and seized narcotics in his possession. The arrest and seizure were not challenged at petitioner's arraignment, but a motion to suppress the use of the narcotics in evidence was made and denied before his trial. They were admitted in evidence at his trial in a federal district court, and he was convicted.

The Supreme Court held that the arrest and seizure were illegal, the narcotics should not have been admitted in evidence, and petitioner's conviction must be set aside. Id. Pg. 481-488.

1. By waiving preliminary examination before the Commissioner, petitioner did not surrender his right to contest in court the validity of the warrant on the grounds here asserted. Id., pg. 483-484.
2. Under Rules 3 and 4 of the Federal Rules of Criminal Procedure, read in the light of the Fourth Amendment, probable cause was not shown by the complaint, and the warrant for arrest was issued illegally. Id., pg. 484-487.
3. Having relief entirely in the courts below on the validity of the warrant, the Government cannot contend in the Supreme Court that the arrest was justified apart from the warrant, because the arresting officer had probable cause to believe that petitioner had committed a felony; nor should the case be sent

back to the district court for a special hearing on probable cause. Id., pg. 487-488.

The defendants docket sheet shows a criminal complaint was filed, and an affidavit to a criminal complaint attached. However, a review of the criminal complaint reveals that it was all based on hearsay, not on personal knowledge ('The information contained in this affidavit is based on my personal ***participation*** [not personal knowledge] in this investigation and from information provided to me by other Special Agents and task force officers and other federal, state, and local law enforcement agents and officers.'

As per the 4th Amendment and *Giordenello*, infra, without a valid complaint, jurisdiction ceases and the case must be dismissed. The actions of the government are a violation of F.R.Crim.P. 3, United States Constitution Article IV and V, and the oath of office of the government officials involved. Jurisidction ceased at the first Due Process violation.

VI. ISSUE TWO: THE INDICTMENT MUST BE DISMISSED BECAUSE NO VOTE OF 12 GRAND JURORS OCCURRED

F.R.Crim.P. 6(f) outlines the requirement for a grand jury vote to indict: 'A grand Jury may indict only if at least 12 jurors concur. The grand jury – or its foreperson or deputy foreperson – **must return** the indictment to a magistrate judge in open court. If a complaint or information is pending against the defendant and 12 jurors do not concur in the indictment, the foreperson must promptly and in writing report the lack of concurrence to the magistrate judge.' Current procedure is for the grand jury members who vote for the indictment to

prepare and file a grand jury concurrence form. On the docket sheet, an indictment was listed but no evidence of a grand jury vote is shown. Without the evidence of the vote of 12 grand jury members, no valid indictment exists, a violation of F.R.Crim.P. 6(f) has occurred, a violation of the Constitution of the United States, Amendment V, has occurred, and the case must be dismissed. As noted, when Due Process is violated, jurisdiction ceases.

VII: ISSUE THREE: THE COURT LACKS JURISDICTION TO PROSECUTE PURSUANT TO TITLE 18 OF THE CRIMINAL CODE

Petitioner requests this Court dismiss the indictment with prejudice and issue an order rendering Defendants indictment and conviction **void**, or alternatively, due to the courts lack of jurisdiction and their conflict of interest pursuant to 28 USC § 455, forward this Petition to the Supreme Court with instructions for the district court to declare unconstitutional and *void ab initio*: (1) Public Law 80-772 which purported to enact Title 18, United States Code, Act of June 25, 1948, Chapter 645, 62 Stat. 683 *et seq.*, and (2) more specifically, Section 3231 thereof, 62 Stat. 826, which purported to confer upon "the district courts of the United States ... original jurisdiction ... of all offenses against the laws of the United States." These legislative Acts violated the **Quorum**, **Bicameral** and/or **Presentment** Clauses mandated respectively by Article I, § 5, Cl. 1, and Article I, § 7, Cls. 2 and 3, of the Constitution of the United States. The federal district court which rendered judgment and ordered commitment of this Petitioner, under Section 3231, lacked jurisdiction and, therefore, the judgment and commitment order is ***void ab initio***. To imprison and detain a Petitioner under a ***void*** judgment and commitment order is unconstitutional and unlawful. Therefore, Petitioner must be discharged from any present

confinements and his judgment must be declared ***void*** immediately to prevent ongoing or future harm. Further structural error occurred in the passage of Title 18 of the criminal code because the statute violates the Federal Register Act, 44 USC §1501, et seq. (1935) as no notice was served on the public as required by the act.

"The[se] facts set forth by petitioner must be accepted as true," and Petitioner is "entitled to a hearing to establish the truth of those allegations." Reynolds v. Cochran, 365 U.S. 525, 528, 533 (1961). Failure to hold a hearing is a violation of the Reynolds v. Cochran standard. Furthermore, the failure to allow Petitioner to be heard before trial or sentencing would violate Due Process (5th Amendment), the "pro se rule", the "Do No Harm Rule", and would establish that the District Court was not independent pursuant to these proceedings.

1. JURISDICTION OF THIS COURT TO HEAR THIS MOTION

The court has jurisdiction to hear this habeas, however the district court has a direct conflict of interest in ruling on its own jurisdiction pursuant to 28 USC § 455, since the district court judge is civilly liable for acting without jurisdiction. This direct conflict of interest almost mandates that all proceedings be stayed and the district court forward the the issue directly to the Supreme Court for a ruling.

It should also be noted that the United States District Court for the Northern District of Iowa has agreed to hear the argument in *U.S. v. Russell James Hodge* and that case is currently pending. For this district court to proceed to trial while this issue is currently pending in the Eighth Circuit would raise serious questions as to the bias of this court and the independence of this court in its proceedings.

2. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED